

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MEDPOINTE HEALTHCARE INC.,)	
)	
)	
Plaintiff,)	C.A. No. 06-164 (SLR)
)	
v.)	
)	
APOTEX INC. and APOTEX CORP.,)	
)	
Defendants.)	

**STIPULATION REGARDING EXPERT REPORT OF RONALD H. SMITH AND
SUBMISSION OF PROSECUTION HISTORY INTO EVIDENCE AT TRIAL**

WHEREAS, on August 6, 2007, defendants served an Expert Report of Ronald H. Smith. That Expert Report discussed, inter alia, the prosecution history of the patent-in-suit, patent office procedures and patent unenforceability due to inequitable conduct;

WHEREAS, on August 24, 2007, plaintiff objected to the Expert Report, and sought to meet and confer about the use of that Expert Report before filing a motion to strike it;

WHEREAS, defendants sought to use the expert Ron Smith at trial in order to provide a testimonial basis to move into evidence at trial the prosecution history file materials for the patent-in-suit and other relevant patents and prosecution history files including the following U.S. patent and related prosecution history files: (1) U.S. Patent No. 3,813,384 (Vogelsang, et al.); (2) U.S. Patent No. 4,704,387 (Engel, et al.); and (3) U.S. Patent No. 4,841,047 (Engel, et al.);

WHEREAS, counsel are aware that in the past the Court has permitted prosecution history file materials into evidence at a bench trial without a witness, where there are no objections;

WHEREAS, the parties have agreed, subject to the approval of the Court, that defendants will withdraw the Expert Report of Ronald H. Smith and not call Mr. Smith as a witness at trial as long as the prosecution history file materials for the patent-in-suit and the other patents identified above can be admitted into evidence at trial, without the need for a sponsoring witness.

NOW THEREFORE, it is hereby ordered, this ____ day of ____, 2007, that upon defendants' withdrawal of the Expert Report of Ronald H. Smith, the prosecution history file materials of the patents-in-suit and the other patents identified above shall be admitted as evidence without the need for a sponsoring witness.

RICHARDS, LAYTON & FINGER, P.A.

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IT IS SO ORDERED this _____ day of _____, 2007

J.